



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2004

Ms. Leah Curtis Morris
Curtis, Alexander, McCampbell & Morris
P. O. Box 1256
Greenville, Texas 75403-1256

OR2004-8318

Dear Ms. Morris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210484.

The Hunt Memorial Hospital District (the "district"), which you represent, received a request for the "Emergency Department Services Agreement," signed on May 29, 2003 and amended on December 19, 2003, between Presbyterian Hospital of Greenville and EMCare. While you raise no exceptions to disclosure on behalf of the district, you indicate that release of the requested information may implicate the proprietary interests of EMCare. Accordingly, you state that you notified EMCare of the request and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). We have reviewed the submitted information. We have also considered comments submitted by the requestor's attorney. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, EMCare has not submitted any comments to this office explaining how release of the requested information would affect its proprietary interests. Therefore, we have no basis to conclude that EMCare has a protected proprietary interest in any of the submitted information. *See* Gov't Code § 552.110(b) (to

prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). We therefore conclude the submitted information is not excepted from required public disclosure and must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

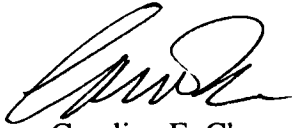
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/krl

Ref: ID# 210484

Enc. Submitted documents

c: Mr. Earl Tyler, M.D.
c/o James M. Rauer, M.D., J.D.
Attorney and Counselor at Law
5521 Greenville Avenue, Suite 104-437
Dallas, Texas 75206
(w/o enclosures)

Mr. James M. Rauer, M.D., J.D.
Attorney and Counselor at Law
5521 Greenville Avenue, Suite 104-437
Dallas, Texas 75206
(w/o enclosures)